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Criminal Justice Committee

Report on the third supplementary Legislative Consent Memorandum for the Crime and Policing Bill (UK Parliament legislation)



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Home Affairs, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

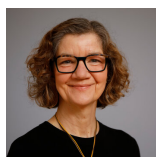


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Introduction

1. At its [meeting on Wednesday 25 February 2026](#), the Criminal Justice Committee considered a third supplementary Legislative Consent Memorandum ("third sLCM") [LCM-S6-57c](#). This was lodged by the Scottish Government in relation to the Crime and Policing Bill which is currently being considered by the UK Parliament.
2. This report summarises the Committee's consideration of the third sLCM.
3. The Committee considered the Scottish Government's initial LCM, [LCM-S6-57](#) and two supplementary LCMs, [LCM-S6-57a](#) and [LCM-S6-57b](#) at its [meeting of 1 October 2025](#) and reported on them in its [7th Report, 2025](#). The Committee recommended to the Parliament that consent be given to the relevant provisions covered by the LCM and both supplementary LCMs.

Outline of the UK Bill

4. The Crime and Policing Bill was introduced by the UK Government in the House of Commons on 25 February 2025.
5. The Bill and associated documents can be viewed on the [UK Parliament website](#).
6. The Bill as amended makes provision about anti-social behaviour, offensive weapons, offences against people (including sexual offences), property offences, the criminal exploitation of persons, sex offenders, stalking and public order, the powers of the police, the border force and other similar persons. It also makes provisions about confiscation; about the police; about terrorism and national security, and about international agreements relating to crime; and about the criminal liability of bodies; and for connected purposes.
7. The following provisions initially triggered the process of requesting the consent of the Scottish Parliament that the provisions be extended to Scotland because they touch upon devolved matters:
 - to create a new offence of “cuckooing” – controlling another's home for criminal purposes;
 - to set out new provisions relating to the management of sex offenders including notification requirements in relation to name changes, absence from sole or main residence, and, in the case of child sex offenders, if entering premises where children are present. The clauses also contain provisions relating to restrictions on applying for replacement identity documents in a new name and powers of entry and search in certain circumstances;
 - to create new offences relating to the possession and supply of electronic devices where there is a reasonable suspicion that this is for use in vehicle theft;
 - to expand the lawful purposes for which the police can access the DVLA driving license database;
 - to protect enforcement authorities from paying expenses during civil recovery proceedings, preventing the court from ordering expenses against them unless the authority acted unreasonably, dishonestly or improperly;
 - to expand the list of criminal lifestyle offences in the Scottish Schedule 4 of the Proceeds of Crime Act 2002;
 - to confer parallel powers on Scottish Ministers and the Secretary of State to make regulations to implement future international agreements as they relate to the sharing of information for law enforcement purposes and to require the Secretary of State to consult with devolved authorities before making regulations in a devolved area;
 - regarding the criminal liability of bodies corporate and partnerships where a senior manager commits an offence.

8. Following the Public Bill Committee stage in the UK Parliament, two sets of amendments prompted the need for a supplementary LCM. These related to:
 - online advertising of unlawful weapons: civil penalties; and
 - powers of the British Transport Police and Ministry of Defence Police.
9. Following amendments tabled on 10 June, four new areas were identified as triggering the LCM process, prompting a second supplementary LCM:
 - offence of child criminal exploitation;
 - remote storage provisions for electronic data;
 - the creation of barred/advisory lists for the National Crime Agency and the British Transport Police; and
 - amendments to the Proceeds of Crime Act 2002.
10. The second supplementary LCM should have included Clause 41 in relation to proving an offence (of child criminal exploitation) under Clause 40. However, **Clause 41 was omitted and is therefore included in the third sLCM.**
11. Further amendments to the Bill were tabled on 27 October, 3 November and 12 November 2025 which would extend to Scotland provisions covering offensive weapons, online sales of knives and crossbows, child criminal exploitation prevention orders, child sex abuse image generators, possession of advice or guidance about creating child sexual abuse (CSA) or CSA images, and providing for a technology testing defence and creating new offences relating to pornographic images of strangulation or suffocation in Scotland.
12. The Bill is currently progressing through the UK Parliament and is at Report stage in the House of Lords. This took place on 25 February 2026.

The Scottish Government's LCM

13. The Scottish Government recommends that the Scottish Parliament consent to the following areas as set out in the third sLCM:
- **Clause 28** - makes changes to the maximum penalties for a number of offensive weapons offences (detailed in paragraphs 13 to 15 of the third sLCM)
 - **Clause 36** - creates a duty to report remote sale of knives etc. in bulk (paragraphs 16 and 17)
 - **Clause 41** – provides further clarity around what activity needs to be proved to establish guilt for an offence under clause 40 (Offence of child criminal exploitation) (paragraphs 18 to 22)
 - **New clauses after clause 55 and after Schedule 5** - relate to child criminal exploitation prevention orders, which are civil orders that can enable prohibitions or requirements to be imposed by courts on adults involved in child criminal exploitation (paragraphs 23 to 28)
 - **New clause after clause 63** - makes it illegal to possess, create or distribute AI tools designed to create Child Sexual Abuse materials (paragraphs 29 and 30)
 - **New clause after clause 64** - makes it an offence to possess advice or guidance that teach potential offenders about abusing children sexually or creating Child Sex Abuse images (paragraphs 31 and 32)
 - **New clauses after clause 84** – introduce a regulation-making power for the Secretary of State (SoS) to introduce a ‘technology testing defence’ for persons authorised by the SoS to carry out technology testing activities to prevent or detect prohibited materials, which fall under specific obscenity offences relevant to Scotland (paragraphs 33 to 37)
 - **New clause after clause 84** - amendments to be inserted after clause 84 create new offences of possession and publication of pornographic images which depict acts of strangulation or suffocation in a manner which is realistic and explicit (paragraphs 38 and 39)
14. The Scottish Government's reasoning for recommending consent to the above clauses is outlined in **paragraphs 40 to 47** of the third sLCM.
15. The draft motion on legislative consent is as follows:

“That the Parliament agrees that the relevant provisions in the Crime and Policing Bill, introduced in the House of Commons on 25 February 2025, and subsequently amended, relating to clause 28 (offensive weapons), clause 36 (duty to report bulk sale of knives), clause 41 (proving the offence of child criminal exploitation at clause 40), new clauses after clause 55 and Schedule 5 (child criminal exploitation prevention orders: Scotland), new clause after clause 63 (child sexual abuse image-generators: Scotland), new clause after clause 64 (possession of advice or guidance about creating child sexual abuse or CSA images), new clauses after

clause 84 (technology testing defence), and new clauses after clause 84 (pornographic images of strangulation or suffocation), so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Consideration by the Delegated Powers and Law Reform Committee

16. The third sLCM was considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meetings on 20 January and 10 February 2026. The [DPLRC's report on the third sLCM](#) was published on 17 February 2026.
17. At the meeting of 20 January the DPLRC agreed to write to the [Scottish Government](#) and the [UK Government](#). Responses were received from the [Cabinet Secretary for Justice and Home Affairs](#) on 29 January 2026 and the [Minister of State for Policing and Crime](#) on 2 February 2026.
18. At the same meeting, the DPLRC agreed that it was content with the following delegated powers in the Bill:
 - Clause 36(2): extending the power conferred on the Scottish Ministers to issue guidance relating to offensive weapons etc. (amending section 66(2) of the Offensive Weapons Act 2019); and
 - New Schedule (Schedule 6, paragraph 10(4)): Power to add to or remove from the list of UK child criminal exploitation prevention orders, breach of which constitutes an offence.
19. The DPLRC report set out that it was content with a number of the other delegated powers in the Bill (outlined in **paragraphs 46 to 62** of the report). However, it drew the following provisions to the attention of the Criminal Justice Committee:

Clause 36: Power to make provision about the reporting of remote sales of knives etc. in bulk (inserting new section 141D(1) in the Criminal Justice Act 1988) and Clause 36: Power to amend definition of a reportable sale of bladed articles (inserting new section 141D(15) in the Criminal Justice Act 1988)

The DPLRC is content with delegation of the powers in principle and that they are subject to the negative procedure (for the power in section 141D(1) of the Criminal Justice Act 1998), and the affirmative procedure (for the power in section 141D(15) of that Act).

However, it draws to the lead committee's attention that:

- the powers are exercisable by the Secretary of State within the legislative competence of the Scottish Parliament. No equivalent powers are conferred on the Scottish Ministers. Regulations made under the powers will accordingly be laid in the UK Parliament only;
- there is a requirement that the Secretary of State consult the Scottish Ministers before making regulations under the powers. There is no requirement to obtain the Scottish Ministers' consent, and no formal scrutiny process in the Scottish Parliament; and
- the Scottish Government has stated that it will write to the relevant subject committee in the Scottish Parliament as either and/or both of the regulation

making powers are used, to update Parliament on the use of the powers and provide details of the consultation that has taken place.

The DPLRC also suggests that the lead committee considers whether it is satisfied that the powers are appropriately framed in the context of this Bill.

New clause 92 “Obscenity etc offences: technology testing defence” – Subsection (1): Power to authorise technology (such as AI models) to be tested for prohibited material, without offences being committed in the course of the testing and new clause 93 “Technology testing defence: Meaning of relevant offence” (after clause 84) – Subsection (5): Power to amend the meaning of “relevant offence”

The DPLRC is content with delegation of the powers in principle and that they are subject to the affirmative procedure.

However, it draws to the lead committee's attention that:

- the powers are exercisable by the Secretary of State within the legislative competence of the Scottish Parliament. No equivalent powers are conferred on the Scottish Ministers. Regulations made under the powers will accordingly be laid in the UK Parliament only;
- there is a requirement that the Secretary of State consult the Scottish Ministers before making regulations under the powers. There is no requirement to obtain the Scottish Ministers' consent, and no scrutiny process in the Scottish Parliament; and
- the Scottish Government has stated that it will write to the relevant subject committee in the Scottish Parliament as either and/or both of the regulation making powers are used, to update Parliament on the use of the powers and provide details of the consultation that has taken place.

The DPLRC suggests that the lead committee considers whether it is satisfied that the powers are appropriately framed in the context of this Bill.

Consideration by the Committee and recommendation

20. At its [meeting of 25 February 2026](#), the Committee took evidence on the LCM from Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs ("the Cabinet Secretary") and Scottish Government officials.
21. In her opening statement, the Cabinet Secretary set out the Scottish Government's reasoning for recommending legislative consent to the relevant provisions in the Bill. She told the Committee that where necessary, a "pragmatic approach"ⁱ has been taken in relation to the points raised by the DPLRC on some of the clauses that confer powers on UK ministers that may be exercised within devolved competence.
22. The Cabinet Secretary drew the Committee's attention to a number of the Bill's provisions including an increase to the maximum penalty that can be imposed on retailers who sell knives and certain other weapons to individuals under the age of 18 (or under 16 if knives for domestic use are being sold) and the creation of a new UK-wide offence which criminalises the possession, adaptation and distribution of artificial intelligence tools that are used to generate child sexual abuse material. She also told the Committee that the Bill will criminalise the possession or publication of pornographic images featuring strangulation or suffocation across the UK.
23. In addition, the Cabinet Secretary indicated that a fourth supplementary LCM is expected covering the remote sale or letting of knives and the application of the definition of "law enforcement employer".
24. In response to questions around the potential for overlap between the proposed child criminal exploitation prevention orders and child protection orders, the Cabinet Secretary clarified that the proposed orders would be imposed on an adult and would require the adult to follow the restrictions imposed on them by the order. Kristy Adams, Organised Crime Unit, Scottish Government also told the Committee that she is not aware of any overlap between the two types of order. However, she indicated that there may be potential for overlap with human trafficking and exploitation prevention orders and risk orders and agreed to provide the Committee with further information on this point.
25. With regards to questions on the creation of a stand-alone offence of non-fatal strangulation, the Cabinet Secretary indicated that a Scottish Government consultation would be launched shortly on this matter, and a range of other matters that would aim to improve protections for women and girls. It is noted that [the consultation](#) opened on 26 February 2026.

26. **The Committee agreed with the recommendation of the Scottish Government that consent be given for the relevant provisions in the Crime and Policing Bill covered by LCM-S6-57c.**

ⁱ [Criminal Justice Committee, Official Report, Wednesday 25 February 2026](#), (Col 17)

